UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS,
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 0204

Application Number: 09/871,863
Filing Date: June 01, 2001
Appellant(s): WATKINS ET AL.

Robert M. Barrett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/29/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the examiner identifies only two groups of claims (1) the group of claims 12-20, which claims the combination of the dialyzer having the header, and (2) the group of claims 1 and 3 –11, and 21-28, which claim the header. These two groups stand or fall together because the alleged novelty in the claims is the header (see specification page 2 lines 15-26); and the reference teaches a dialyzer with a header having all the elements recited in the claims.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

DE 3435883 A1	Heilmann, et al	9/86

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 3435883 A1.

DE '883 teaches a dialyzer inlet header comprising a body (fig 1 and 2), inlet channel providing fluid communication (28) to the interior of the dialyzer and defining a flow path axial to the fiber bundle, one member modifying the fluid flow (fig 2) as it exits the inlet channel as in instant claim(s), and the member includes a curved vane extending from the body as in claim 1. The additional element in Independent claim 21: body member having plurality of members imparting a circular motion is item 50 of fig 2. Independent claim 12 is for a dialyzer having the following elements in addition to that of claim 1: body with first and second end (see figures: only one end shown), fiber bundle (20), blood inlet (28), and the member (fig 2) is integral and in juxtaposition to the blood inlet causing blood to flow to the perimeter.

Re the member including curved vanes being extending from or integral with the body: "...the use of a one piece construction instead of the structure

disclosed in [the prior art] would be merely a matter of obvious engineering choice" (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)).

DE '883 teaches additional elements of the dependent claims as follows: Curved vanes (50) and curved channels as in instant claim(s) 6, 10, 11, 13, 16, 18, 19, 22 and 23. Eight vanes and eight channels as in instant claim(s) 3,7, 27 and 28. (Please note that a channel is formed between two vanes; 8 vanes in a circular pattern makes 8 channels between them) Inlet channel is located at a center of the body (see fig 1) as in instant claim(s) 4, 14 and 26. Header (blood inlet) is sealed to an end of the dialyzer (see fig 1) as in instant claim(s) 5 and 15. Member includes a disk (46) that obstructs the flow as it exits into portions of the interior of the header as in instant claim(s) 8 and 24. The disc that obstructs the flow is located under the exit opening of the inlet channel as in instant claim(s) 9, 17 and 25. The dialyzate inlet and outlet fluid flow channels are radial to the fiber bundle as in instant claim(s) 20 (see fig 1, 2).

(11) Response to Argument

A. Response to appellant's arguments about improper application of anticipation and obviousness standards: Appellant describes an improved header design for the purpose of improved blood flow into a hollow fiber membrane dialyzer, to prevent blood from stagnating in certain regions of the dialyzer and having a uniform flow through the dialyzer for an effective dialyzing function. Towards this end, applicant has provided a header with a centrally located axial inlet and a group of eight (8) vanes or channels inside of the header that directs the blood

flow radially, with imparting a circular motion, towards the periphery of the cylindrical housing from the axially central inlet. The reference also has an axially central inlet in the header, with a member which has radially curving vanes (or channels formed between the vanes), eight (8) in number, as claimed. The only difference between the appellant's design and that of the reference is that the appellant has the vanes on the inside wall of the header, the reference has the vanes on a disc member attached to the header wall, and the vanes in the reference may be construed as facing in the opposite direction as that of the appellant. None of the claims clearly bring out this difference between the reference and the application. The examiner believes that the claims are anticipated by the reference. However, since Claims 1 and 21 recite the vanes as "extending from the body" (meaning integral to) of the header and claim 12 recite them as being integral to the blood inlet, which if creates any shadow of doubt as to the anticipatory rejection, the rejection is also made obvious in the alternative (MPEP 706.02 (m)). The vanes in the reference are on a disc which is non-detachably attached to the header wall, as opposed to 'molded to' the header wall as in the application. The examiner believes that this attachment, which is difficult to separate, is integral enough. However, if one believes that it should be molded in one piece to be integral, then the 103 (a) rejection with equivalence applies.

B. Appellant's argument that reference does not disclose or suggest the claimed invention: Please see the rejection. There is a corresponding element in the reference for every element of appellant's claims.

C. Appellant's argument for the novelty and non-obviousness of the claims: Appellant points out three points (1) vanes not integral to the header – this is already discussed above. Even if the vanes are not considered integral, "...the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice" (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)). (2) the guide ribs extend from the plate and not the closure cap – this difference is not brought out by the claim language. (3) imparting the circular motion: the vanes in the reference are also curved, and therefore, should provide the circular motion even if the reference does not specifically state so. (inherent: Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. In re King, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986)). It may also be noted that the reference could have more than what is claimed – the claims are open ended. So, the added feature of the flow being 'radially inward under the plate' does not negate anticipation.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Krishnan Menon
Patent Examiner

February 18, 2004

W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Conferees

Thomas Dunn

Wanda Walker

BAXTER HEALTHCARE CORPORATION
RENAL DIVISION
1 BAXTER PARKWAY
DF3-3E
DEERFIELD, IL 60015